

LAW OFFICE OF AM

Honorable Philip M. Halpern
The Hon. Charles Brieant Jr. Federal
Building and U.S. Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: *Marshall v. Annucci, et al.*, 18-cv-6673

Dear Judge Halpern:

We are *pro bono* counsel to Plaintiff in the above-referenced matter and write with two requests. First, the Court issued a so ordered subpoena for Defendants to take the testimony of David Alicea, an incarcerated individual currently in custody at Woodbourne Correctional Facility on February 9, 2022. (Dkt. No. 117.) The deposition is now scheduled to proceed on March 9, 2022. This office has learned from Mr. Alicea that he is suffering from bladder cancer. Consequently, we would like to proceed with the deposition as a *de bene esse* deposition and video record it, as well as take direct testimony to ensure the preservation of Mr. Alicea's testimony for trial. This can easily be accomplished in the prison as we have done it several times through the available video technology. Pursuant to Fed. Rule Civil P. 30(a)(2)(B), Plaintiff respectfully requests the Court grant leave for Plaintiff to take testimony from Mr. Alicea and to video record it as an *de bene esse* deposition.

Second, the parties seek a thirty-day extension of the current discovery deadlines. The current discovery end date is February 21, 2022. The parties have begun taking depositions and have three that will necessarily fall outside of the current deadline, including the deposition of Defendant Murphy. Plaintiff awaits fundamental evidence in the form of the audio recordings of the November 16, 2016 disciplinary hearing that is the root of one of the claim against Defendant Murphy. We understand that Defense counsel awaits delivery of the original tapes from Green Haven Correctional Facility. When the missing audio is produced and reviewed, the parties will then schedule the deposition of Defendant Murphy which has already been noticed. Accordingly, the parties respectfully request that the Court grant an extension of the discovery deadline to March 21, 2022. This is the second request for an extension.

Respectfully submitted,

/s/ *AJ Agnew*

Amy Jane Agnew, Esq.
Pro Bono Co-Counsel for Plaintiff

Applications granted. Plaintiff may take direct testimony of Mr. Alicea and record it as a deposition *de bene esse*. Discovery deadlines are extended such that fact discovery is due by 3/23/2022 and expert discovery is due by 6/16/2022. The case management conference previously scheduled for 6/28/2022 is adjourned to 7/28/2022 at 11:00 a.m.

SO ORDERED


Philip M. Halpern
United States District Judge

Dated: White Plains, New York
February 4, 2022